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Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
U.S. Department of Agriculture
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To Whom It May Concern:

I am writing to express my most serious concerns with the U.S. Department of Agriculture, Agricultural Marketing Service (AMS) proposed regulation for mandatory country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts.

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Herring, smoked salmon products

I would like to make four key comments regarding the proposed regulation:

1. The proposed definition of a processed food item is unacceptably narrow.
2. The proposed level of processing necessary to be able to label product as "Processed in the USA" is too great.
3. AMS should allow for "May Contain..." labeling for commingled products
4. AMS should specifically authorize the use of a check-box approach to identifying country of origin.

1. The Proposed Definition of a Processed Food Item is Unacceptably Narrow

The 2002 Farm Security and Rural Investment Act of 2002, while requiring mandatory country of origin labeling for certain covered commodities, exempts from this labeling requirement ingredients in a processed food item. The AMS Proposed Regulation, however, applies the labeling requirement to clearly processed seafood items including cooked, canned, and breaded items.

Seafood production is generally regulated by the Food and Drug Administration (FDA) under the Food, Drug, & Cosmetic Act (FDCA). The FDCA defines a processed food

item as "any food other than a raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, and milling" (21 USC Sec. 321 (gg)).

Further, seafood is regulated by the FDA under Hazard Analysis & Critical Control Point (HACCP) regulations. The HACCP regulations state that processing "means, with respect to fish or fishery products: Handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding" (21 CFR Part 123.3(k)).

In addition, the US Customs Service defines in general terms the concept of Substantial Transformation as a level of processing which results in an article having a name, character, or use differing from that of the imported article and exempts such transformed products from US Customs Service labeling requirements.

It is clear from these definitions that regulatory precedent exists for a broad definition of a processed food item. In addition, this regulatory environment was in place at the time Congress exempted from mandatory labeling "ingredients in a processed food item" and is a critical aspect of the context in which this exemption was provided. At a minimum, therefore, I strongly urge the AMS to adopt a definition of a processed food item that comports with the FDCA definition and the Customs definition of substantial transformation. Specifically, the AMS should exempt all cooked, canned, breaded, frozen, and other processed seafood items.

Such a broader definition of a processed food item would dramatically lower the estimated costs of implementation calculated by the USDA. As the White House Office of Management and Budget has reported, this is one of the most costly regulations ever proposed by the USDA. Given the USDA analysis of a lack of benefit to US producers and a lack of interest from US consumers, it would seem not only prudent, but imperative for the USDA to lower the costs of implementation by more broadly defining processed food items consistent with other regulations.

2. The proposed level of processing necessary to be able to label product as "Processed in the USA" is too great.

Under the proposed regulation, in order for an imported product that has been further processed in the United States to be labeled as "Product of Country X, Processed in the United States" the level of processing that occurs in the United States must be a level of processing that has been deemed to constitute a substantial transformation of the product by the U.S. Customs Service. This required level of processing in order to label product as "Processed in the United States" is too great.

First and foremost, substantially transformed products should be exempt from any mandatory labeling requirements as outlined above. While these products should not be required to labeled as to country of origin, they certainly should be allowed to be identified on a voluntary basis as "Processed in the United States" consistent with other

laws and regulations. However, imported products that are subjected to a level of processing beyond simple repackaging yet less than that which constitutes substantial transformation should be eligible to be labeled on a voluntary basis as "Processed in the United States".

3. AMS should allow for "May Contain..." labeling for commingled products.

The proposed regulation intelligently eliminated the requirement for commingled products to be labeled as to country of origin by order of predominance by weight and instead provides for alphabetical listing of multiple countries of origin. The AMS should be applauded for adopting this far more reasonable and practical approach. However, this regulation will still require processors sourcing similar covered commodities from multiple countries of origin to maintain a far greater inventory of packaging materials in order to deal with endless variations in supply mix on a day-to-day basis, dramatically increasing inventory and operational costs. The AMS should, therefore, allow for labeling stating that a product "May Contain [Product] from the following countries: listing of such countries in alphabetical order".

4. AMS should specifically authorize the use of a check-box approach to identifying country of origin.

The AMS has intelligently provided for a great deal of flexibility as to the means of notification of country of origin on covered commodities. In informal communications, officials of the AMS have suggested that a check-box format would be acceptable under the regulations whereby multiple countries of origin are listed in a table and those countries of origin that are applicable to the retail package in question may be checked or otherwise effectively identified. This is an imminently practical approach to labeling. The final regulations should clarify that this would, indeed, be considered an acceptable method of notification.

Thank you for the opportunity to submit these comments.